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11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13  
14 TRUC N. HARRIS,  
15 Plaintiff,

16 v.

17 MICHELLE KALINA DIAS, et al.,  
18 Defendants.  
19

Case No. 14-cv-852 BAS (DHB)

**ORDER GRANTING LEAVE TO  
AMEND AND REMANDING  
MATTER TO STATE COURT  
(ECF 4)**

20 **Background**

21 Plaintiff Truc N. Harris commenced an action to recover disability benefits,  
22 and other related claims, in the San Diego County Superior Court on April 10,  
23 2013. ECF 1-15, 3–24 (“Complaint”). Initially, Harris sued Defendant Standard  
24 Insurance Company of Portland, Oregon (“Standard”), Michelle Kalina Dias  
25 (“Dias”), Professional Disability Insurance Services, Inc. (“Professional”), and ten  
26 fictional defendants. Standard is an Oregon corporation, Dias and Professional are  
27 California citizens. *Id.* at ¶¶ 1–4.

28 Harris settled her claims with Dias and Professional on March 6, 2014.

1 Notice of Removal, Ex. A, 992–999. Dias agreed to pay Harris \$350,000, and in  
 2 exchange she agreed to dismiss Dias and Professional with prejudice. *Id.* at 3.1–  
 3 3.2. Dias and Professional were dismissed on April 8, 2014 (*id.* at 1031), creating  
 4 diversity, and Standard filed for removal on April 9, 2014 (ECF 1).

5 Harris initially sued Standard and Dias to recover the full benefits of her  
 6 disability insurance under both her primary and secondary policies. Compl. In  
 7 March 2011, Harris attempted to increase her existing disability policy with  
 8 Standard to reflect her increased income. *Id.* at ¶ 20. Dias inserted, without her  
 9 approval or consent, inaccurate income information. *Id.* at ¶ 46. Therefore when  
 10 Harris allegedly became disabled, she was presented with a “Hobson’s choice” of  
 11 either reforming the contract to a lower benefit or receiving no benefits  
 12 whatsoever. *Id.* at ¶ 42. Accordingly, Harris sued Standard and Doe defendants  
 13 for breaches of contract and good faith and fair dealing (*Id.* at ¶¶ 53–70) and Does,  
 14 Dias, and Standard for negligence (*Id.* at ¶¶ 71–78). Harris also sued for  
 15 declaratory relief against all defendants. *Id.* at ¶¶ 79–82. In her prayer for relief,  
 16 she prayed for attorneys’ fees and costs of suit. ECF 1-15, 26.

17 Harris now seeks to amend her complaint to join Disability Insurance  
 18 Services, Inc. (“DIS”). Prop. Second Am. Compl. ¶ 3. Harris avers that DIS’  
 19 alleged agents Bottem and Steenersen conspired with Dias to conceal information  
 20 from Standard and to evade responsibility for their misconduct. *Id.* at ¶¶ 100–101.  
 21 Accordingly, she claims a cause of action for professional negligence against DIS.  
 22 *Id.* at ¶¶ 93–108.

23 Harris’ counsel, Robert J. McKennon, learned of DIS’ involvement during  
 24 discovery in state court, during October 2013. ECF 4-3, McKennon Decl. ¶ 4.  
 25 Based on the facts revealed in discovery, McKennon believed DIS actively  
 26 conspired to misrepresent Harris’ financial information to maximize their  
 27 commission. *Id.* at ¶ 6. To facilitate settlement, McKennon chose not to join DIS  
 28 immediately. *Id.* at ¶ 7. At the case management conference on March 21, 2014,

1 Harris' counsel stated DIS "may be added" as a defendant. James Decl. ¶ 5. On  
 2 April 8, 2014, Harris settled with Dias and dismissed Dias and Professional from  
 3 the litigation. McKennon believed he was still engaged in settlement negotiations  
 4 with Standard until Standard removed the action to federal court on April 9, 2014.  
 5 McKennon Decl. ¶ 9.

6 After Harris filed her motion for leave to amend to join DIS, Standard  
 7 informed Harris it would pay the full benefits under the policy. ECF 13-1, Xu  
 8 Decl. ¶ 13.

### 9 10 **LEGAL STANDARD**

11 28 U.S.C. § 1447(e) states, "If after removal the plaintiff seeks to join  
 12 additional defendants whose joinder would destroy subject matter jurisdiction, the  
 13 court may deny joinder, or permit joinder and remand the action to the State  
 14 court." "Congress added subsection (e) to § 1447 with the purpose of taking  
 15 advantage of the opportunity opened by removal from a state court to permit  
 16 remand if a plaintiff seeks to join a diversity-destroying defendant after removal."  
 17 *IBC Aviation Servs., Inc. v. Compania Mexicana de Aviacion, S.A. de C. V.*, 125  
 18 F.Supp.2d 1008, 1011 (N.D.Cal.2000) (citing H.R.Rep. No. 100–889, at 72–73).  
 19 Permitting joinder under § 1447(e) is in the discretion of the Court. *Newcombe v.*  
 20 *Adolf Coors Co.*, 157 F.3d 686, 691 (9th Cir.1998); *IBC*, 125 F.Supp.2d at 1011;  
 21 *Clinco v. Roberts*, 41 F.Supp.2d 1080, 1082 (C.D.Cal.1999). Generally, however,  
 22 when weighing whether to permit joinder, a court should consider (1) whether the  
 23 party plaintiff seeks to join is required for just adjudication and would be joined  
 24 under Fed.R.Civ.P. 19(a); (2) whether the statute of limitations would bar an action  
 25 against defendant in state court; (3) whether the joinder is untimely, or there has  
 26 been an unexplained delay in its request; (4) whether joinder is intended solely to  
 27 destroy diversity jurisdiction, (5) whether the claims against the new defendants  
 28 appear valid; and (6) whether denial of joinder will prejudice the plaintiff. *IBC*,

1 125 F.Supp.2d at 1011 (citing *Palestini*, 193 F.R.D. 654, 658 (S.D.Cal.2000)). Any  
 2 of the factors might prove decisive, and none is an absolutely necessary condition  
 3 for joinder.

## 4 **DISCUSSION**

5  
 6 Standard contends that DIS should not be joined because it is not a necessary  
 7 party under Federal Rule of Civil Procedure 19(a). Rule 19(a) requires joinder of  
 8 persons whose absence would prevent complete relief, impede their ability to  
 9 defend themselves or their interests, or subject a party to the risk of inconsistent  
 10 obligations. Fed.R.Civ.P. 19(a); *IBC*, 125 F.Supp.2d at 1011. These parties are  
 11 deemed necessary. “This standard is met when failure to join will lead to separate  
 12 and redundant actions [in different forums].” *IBC*, 125 F.Supp.2d at 1012 (citing  
 13 *CP Nat'l Corp. v. Bonneville Power Admin.*, 928 F.2d 905, 912 (9th Cir. 1991)).  
 14 “Although courts consider whether a party would meet Fed. R. Civ. Proc. 19's  
 15 standard for a necessary party, amendment under § 1447(e) is a less restrictive  
 16 standard than for joinder under Fed. R. Civ. Proc. 19.” *IBC*, 125 F.Supp.2d at  
 17 1011–12. Courts may permit joinder where the proposed defendant has “more than  
 18 a tangential relationship to the cause of action.” *IBC*, 125 F.Supp.2d at 1012.

19 Here, DIS allegedly conspired with Dias to transmit inaccurate income  
 20 information and then covered up the error to retain a larger commission. This  
 21 directly relates to the alleged negligence of Standard, and it is more than a  
 22 tangential relationship to the already-alleged negligence action. Although the  
 23 statute of limitations has not run on any claims against DIS, common issues of fact  
 24 predominate to such an extent that any litigation against DIS would be redundant.  
 25 Standard has not sufficiently shown how it will be prejudiced if amendment is  
 26 granted, and therefore on balance the prejudice to Harris in forcing her to possibly  
 27 conduct redundant litigation in state court outweighs any prejudice to Standard.  
 28 Additionally, Harris’ demonstrated interest in joining DIS prior to removal satisfies

1 the Court that amendment is not solely to destroy diversity.

2 Therefore the Court in its discretion finds the factors decisively in favor of  
3 amendment. Accordingly, the Court **GRANTS** Harris leave to amend the  
4 complaint to join DIS.


5  
6 **CONCLUSION**

7 For the reasons set forth above, the Court **GRANTS** Plaintiff's request for  
8 leave to amend her complaint.

9 **IT IS FURTHER ORDERED** that the action be **REMANDED** to the  
10 Superior Court of California, County of San Diego.

11 **IT IS SO ORDERED.**

12  
13 **DATED: August 14, 2014**

14   
15 **Hon. Cynthia Bashant**  
16 **United States District Judge**